

OPINION
53-74

June 26, 1953 (OPINION)

MILITARY

RE: City Employees Deduction From Pay While in National Guard

This is in reply to you letter of June 24, 1953. You inquire if, under the provisions of section 37-0125, 1949 supplement to the North Dakota Revised Code of 1943, a city may deduct from the pay of an employee on National Guard or Organized Reserve duty the amount of his military pay during the period of his military absence.

During the first thirty days of such military absence, the employee, if meeting the qualifications stated in that section, is entitled to leave of absence "without loss of pay".

It is our opinion that "loss of pay" here means diminution or reduction of pay. It means a loss or a diminution of the pay he normally receives from the political subdivision. The military pay he may receive during this period has no bearing on the question and may not be taken into consideration. It is therefore our opinion that during such period, the employee should receive his full pay from the city of Valley City.

The provisions of section 37-0125 are so construed by us to apply to calls to duty with the National Guard, including summer encampment; members of the Officers Reserve Corps ordered to active duty; and employees ordered by component of the United States Armed Forces.

This section would not, however, apply to an employee who enters upon a civilian position for one of the armed services.

ELMO T. CHRISTIANSON

Attorney General